

INITIAL STATEMENT OF REASONS
TITLE 13, DIVISION 1, CHAPTER 1
ARTICLE 2.1 - COMMERCIAL DRIVER LICENSES
EMPLOYER TESTING PROGRAM

The Department of Motor Vehicles (department) proposes to amend Sections 25.06, 25.07, 25.08, 25.09, 25.10, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21 and 25.22 in Chapter 1, Division 1, Article 2.1 of Title 13, California Code of Regulations, relating to the Employer Testing Program.

The department is authorized in Part 383 of Title 49 of the Code of Federal Regulations and by Vehicle Code Section 15250(c) to use third-party testers to conduct the commercial behind-the-wheel driving test under specified conditions. Third-party testers, or Examiners, are required to conduct a drive test at least one time in a 90 day period. A drive test consists of a pre-trip inspection, skills test and road test, all of which are to be documented by the examiner on forms specified by the department.

These proposed regulations will allow an examiner to conduct a drive test with an existing commercially licensed driver employed by the examiner's company to meet the 90 day requirement. These regulations will require the test to consist of a pre-trip inspection, skills test and road test on a department approved route and utilizing a department score sheet and will require supplemental documentation to be completed indicating the results of the test.

These amendments will also update revisions made to several departmental forms relating to the Employer Testing Program.

§25.06. Authority and Definitions.

Subsection (a) is amended to update the revision date of the Certificate of Driving Skill, form DL 170 ETP from 11/2002 to 9/2006. This form was amended in September 2006 to change the telephone number for the Employer Testing Program Unit. This change is located at the top of the first page of the form. The September 2006 revision also updated the Employer Testing Program Unit's Mail Station number from H275 to L224. This change is located at the bottom of the first page under "DMV Field Office" and on the second page under the heading "DMV Employee."

This subsection is also amended to update the revision date of the Firefighter's Certificate of Driving Skill, form DL 170F ETP from New 11/2005 to Rev. 9/2006. This form was amended in September 2006 to change the telephone number for the Employer Testing Program Unit. This change is located at the top of the first page of the form. The September 2006 revision also updated the Employer Testing Program Unit's Mail Station number from H275 to L224.

§25.07. Employer Prerequisites.

Subsection (c)(1) is amended to update the revision date of the Application for Employer Number, form DL 520 ETP from 8/2002 to 9/2006. This form was amended in

September 2006 to update the Employer Testing Unit telephone number and Mail Station number. This form was also amended to indicate that the Application for Employer Number fee is \$45. The last form revision indicated a yearly fee of \$15. Since the fee is \$15 per year and the renewal cycle is every three years, the department must indicate the \$45 fee at the top of the Application. This fee is authorized by Vehicle Code Section 15250(c)(2)(H) which authorizes the department to charge the third-party tester a fee which is sufficient to defray the actual cost incurred by the department.

Subsection (c)(2) is amended to update the revision date of the Certificate of Driving Skill, form DL 170 ETP from 11/2002 to 9/2006. Details of the form revision are located in Section 25.06(a) of this Initial Statement of Reasons.

Subsection (c)(3) is amended to update the revision date of the Firefighter's Certificate of Driving Skill, form DL 170F ETP from New 11/2005 to Rev. 9/2006. Details of the form revision are located in Section 25.06(a) of this Initial Statement of Reasons.

§25.08. Employer Testing Program Enrollment.

Subsection (a)(1) is amended to require the employer to submit a completed and signed Application for Employer Number to the department. This is necessary to ensure the department captures all the required information contained in this form.

This subsection is also amended to delete subsections (a)(1)(A) through (a)(1)(T). The form is now incorporated by reference. The Application for Employer Number, form DL 520 ETP was adopted pursuant to the Administrative Procedures Act in prior versions of the California Code of Regulations.

Subsection (a)(2) is amended to require the employer to submit a completed and signed Employer Testing Program Agreement, form DL 520B ETP, Rev. 3/2007. This agreement is necessary to comply with the requirements placed on the department after a Federal audit was done on the department's Licensing Division. The audit reported that the department must develop an agreement, to be signed by the applicant, explaining the rules and requirements placed on the applicants. The applicant is to sign the agreement in accordance with the laws of the State of California. The following terms are set forth in the agreement.

- The agreement is between the Department of Motor Vehicles, hereinafter referred to as DMV, and (Applicant's Name), hereinafter referred to as Firm, for the purpose of DMV accepting Certificates of Driving Skill issued by the Firm in lieu of driving tests for a Class A or B, or Restricted Class A or B firefighter license applicant when the applicant is employed by the Firm and the applicant has met the other requirements of the license for which he or she is applying.

The department is granted authority from Vehicle Code section 15250(c)(2) and section 383.75(a)(2), Code of Federal Regulations which refers to an agreement between third-party testers and the department.

- This Agreement and the employer number issued to the Firm by DMV shall expire at the same time. The term of expiration shall be for up to three years and shall be renewed at that time.

This provision is necessary to ensure the applicant is aware that the agreement expires at the same time the employer number expires. Both are valid for a period of three years.

- This Agreement is subject to acts of the Federal Government pursuant to the Commercial Motor Vehicle Safety Act of 1986 which may affect the provisions or terms of this Agreement and to any restrictions, limitations, or conditions enacted by the California State Legislature and any regulations promulgated pursuant thereto which may affect the provisions or terms herein in any manner.

This is necessary to clarify that terms of this agreement are established by federal government in association with the California State Legislature.

- No amendment, alteration, or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement, not incorporated herein, shall be binding on either party.

This provision is to clarify that any change to the Agreement is not valid unless signed by the firm and the department nor will an oral agreement be allowed by either party. This provision is specified in section 25.08(c), Title 13, California Code of Regulations.

- This Agreement is subject to the right of either party to terminate the Agreement at any time without cause by giving the other party at least thirty (30) days prior notice of such termination.
- The Firm shall have all required drive tests conducted by an examiner who has attended and passed the DMV examiner training, conducted a drive test or training drive test in the past 90 days, holds a valid California Class A or Class B driver license as required for the test vehicle, who has a satisfactory driving record and who is not on probation for negligent operation of a motor vehicle.

This requirement is contained in section 383.75(a)(2)(iii) of the Code of Federal Regulations and sections 25.19 and 25.22 of Title 13, California Code of Regulations.

- The drive test given by the Firm to those drivers issued a Certificate of Driving Skill must meet the drive test route requirements and drive test standards established by DMV to test commercial drivers. DMV will provide the Firm with information concerning these requirements and standards. DMV will also provide

a sample of the drive test score sheet the firm is required to use to record and evaluate the driver's performance on the test.

This requirement is contained in section 383.75(a)(1) of the Code of Federal Regulations and sections 25.10, 25.13, 25.15, and 25.16 of Title 13, California Code of Regulations

- The Firm shall issue Certificates of Driving Skill only to employees of the Firm who are: (1) employed by the Firm at the time of training, testing and certification and (2) required by law to hold a commercial license to operate commercial vehicles in the course of employment with this Firm.

This requirement is contained in section 383.75(b) of the Code of Federal Regulations and section 25.19(h) of Title 13, California Code of Regulations.

- The Certificate of Driving Skill will not be accepted in lieu of the DMV drive test for drivers of commercial Class C vehicles.

This requirement is contained in Vehicle Code section 12804.9(e).

- At the discretion of the DMV, the Firm shall permit DMV to test a sample of its drivers examined and certified by the Firm. The selection of drivers to be tested will be determined by DMV. Any driver who fails the test shall be required by DMV to pass a DMV administered test. The employer shall notify each driver of this possibility.

This requirement is contained in section 383.75(a)(2)(iv) of the Code of Federal Regulations and section 25.16 of Title 13, California Code of Regulations.

- The Firm shall allow DMV or its representatives and the Federal Highway Administration or its representatives to conduct random examinations inspections and audits without prior notice, during regular business hours.

This requirement is contained in section 383.75(a)(2)(i) of the Code of Federal Regulations and in Vehicle Code section 15250(c)(2)(A) and section 25.15 of Title 13, California Code of Regulations.

- DVM shall conduct on-site audits/inspections at least annually and the Firm shall permit DMV or its representative to conduct on-site audits/inspections at least annually, during normal business hours, to be determined by DMV.

This requirement is contained in section 383.75(a)(2)(ii) of the Code of Federal Regulations and in Vehicle Code section 15250(c)(2)(B) and section 25.11 of Title 13, California Code of Regulations.

- Any third-party tester whose agreement has been cancelled pursuant to Vehicle Code section 15250(c)(2)(D), may immediately apply for a third-party testing agreement.

This requirement is contained in Vehicle Code section 15250(c)(2)(E) and section 25.17 of Title 13, California Code of Regulations.

- A suspension of a third-party testing agreement pursuant to Vehicle Code section 15250(c)(2)(D) shall be for a term of less than 12 months as determined by the department. After the period of suspension, the agreement shall be reinstated upon request of the third-party tester.

This requirement is contained in Vehicle Code section 15250(c)(2)(F) and section 25.08 of Title 13, California Code of Regulations.

- A revocation of a third-party testing agreement pursuant to Vehicle Code section 15250(c)(2)(D) shall be for a term of not less than one year. A third-party tester may apply for a new third-party testing agreement after the period of revocation and upon submission of proof of correction of the circumstances causing the revocation.

This requirement is contained in Vehicle Code section 15250(c)(2)(G) and in section 25.18(f) of Title 13, California Code of Regulations.

- Authorization for the department to charge the third-party tester a fee, as determined by the department, which is sufficient to defray the actual costs incurred by the department for administering and evaluating the third-party testing program and for carrying out any other activities deemed necessary by the department to ensure sufficient training for the driver's participating in the program.

This requirement is contained in Vehicle Code section 15250(c)(2)(H).

- DMV may terminate this Agreement for cause and cancel, suspend, or revoke the employer number issued to the Firm if the Firm violates any provision of this Agreement, upon 15 days prior written notice of such action.

This requirement is contained in Vehicle Code section 15250(c)(2)(D) and in section 25.18(b) of Title 13, California Code of Regulations.

- DMV may terminate this Agreement for cause and without prior notice if the Director of Motor Vehicles finds that the public interest so requires.

This requirement is contained in Vehicle Code section 15250(c)(2)(D).

- The Firm agrees to defend, indemnify and hold harmless DMV and its officers and employees from any and all claims, actions, damages or losses which may be brought or alleged against the DMV, its officers or employees by reason of the negligent or unauthorized certification of drivers by the Firm.

This provision is necessary to ensure the department is protected from damage or losses which occur as a result of unauthorized certification of drivers.

- This Agreement is not assignable by the Firm, either in whole or in part, without the prior written consent of DMV.

This provision is necessary to clarify that a third-party tester is prohibited from transferring this agreement to another person or firm without consent of the department.

- The Firm and its officers, agents and employees shall act in an independent capacity and not as officers, agents or employees of DMV.

This is necessary to clarify that a third-party tester is required to adhere to testing standards established by state and federal government. The third-party tester is prohibited from establishing testing guidelines not approved by the department and is prohibited from acting or representing themselves as a departmental employee, agent or officer.

- If the Firm utilizes a subcontractor in the performance of this Agreement, the subcontractor shall be subject to the same requirements as are identified in this Agreement for the Firm. The Firm shall be responsible and held liable for all program related activities of the subcontractor.

This provision is necessary to clarify that a subcontractor must adhere to the testing standards established by state and federal government. This provision also clarifies that the firm is responsible for activities carried out by the subcontractor.

- This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Subsection (a)(3) is added to require the department to notify the applicant of the approved application by signing and returning a copy of the agreement to the applicant.

Subsection (a)(4) is amended to renumber this subsection due to the addition of subsection (a)(3) and to update the revision date of the Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP from 2/2005 to 2/2003. Current regulations indicate a revision date of February 2005 for the DL 814 ETP form and this form has not been revised since February 2003. This amendment is necessary to ensure the Employer Testing Program regulations indicate the correct revision date of this form.

Subsection (a)(4) is amended to update the revision date of the Commercial DPE Maneuver Checklist, form DL 807 ETP from 7/2002 to 9/2006. The form was updated in September 2006 to delete the “Left – Miscellaneous” and “Right – Miscellaneous” requirements under the “Maneuver” portion of this form and replace it with “Left – Uncontrolled” and “Right – Uncontrolled” requirements. This is necessary to ensure that the individual being tested has knowledge and ability to maneuver all turning aspects. The previous version of this form did not specify that the test taker be required to prove his or her ability to maneuver an uncontrolled left or right turn. The revised form ensures the test taker has been tested on this important traffic maneuver. The second page of this form has been amended to update the Employer Testing Program Unit’s Mail Station and telephone number.

Subsection (a)(5) has been renumbered due to the addition of subsection (a)(3) in this section.

Subsections (c) and (d) have been deleted and renumbered. These requirements are repealed due to the passage of Assembly Bill 1757 (Chapter 229, Statutes of 2003) relating to the Permit Reform Act of 1981. If an application is incomplete the department will send the package back to the applicant. This information is contained on the Application for Employer Number, form DL 520 ETP. The department does not believe it is necessary for this information to be repeated in regulation.

Subsection (c) is amended to update the revision date of the Application for Employer Number, form DL 520 ETP from 8/2002 to 9/2006. Details of the revisions are located in Section 25.07(c)(1) of this Initial Statement of Reasons.

Subsection (d) is amended due to section renumbering.

Subsection (e) is amended due to section renumbering and to update the revision date on the Application for Employer Number, form DL 520 ETP from 8/2002 to 9/2006. Details of the revisions are located in Section 25.07(c)(1) of this Initial Statement of Reasons.

Subsection (f) is amended due to section renumbering.

Subsection (g) is amended due to section renumbering.

Subsection (g)(1) is amended to update the revision date of the Application for Employer Number, form DL 520 ETP from 8/2002 to 9/2006. Details of the revisions are located in Section 25.07(c)(1) of this Initial Statement of Reasons.

This subsection is amended to require the employer to submit completed and signed Employer Testing Program Agreement, form DL 520B ETP Rev. 3/2007. Details of the form contents are described in subparagraph (a)(2) of this section.

Subsection (h) is amended due to section renumbering.

Subsection (h)(1) is amended to update the revision date of the Application for Employer Number, form DL 520 ETP from 8/2002 to 3/2007. Details of the form revisions are located in Section 25.07(c)(1) of this Initial Statement of Reasons.

Subsection (h)(3) is added to require the employer to submit a completed and signed Employer Testing Program Agreement, form DL 520B ETP, Rev. 3/2007. Details of the form contents are described in subparagraph (a)(2) of this section.

Subsection (h)(4) is renumbered due to the addition of information contained in subsection (h)(3).

Subsection (h)(5) is renumbered due to the addition of information contained in subsection (h)(3).

Subsection (i) is amended due to section renumbering and to update the revision dates of:

- The Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP, from 2/2005 to 2/2003,
- The Commercial DPE Maneuver Checklist, form DL 807 ETP, from 7/2002 to 9/2006,
- The Application for Employer Number, form DL 520 ETP, from 8/2002 to 9/2006.

Details of these revisions are found in Sections 25.07 and 25.08 of this Initial Statement of Reasons.

Subsection (l) and (m) are deleted and renumbered. These requirements are repealed due to the passage of Assembly Bill 1757 (Chapter 229, Statutes of 2003) relating to the Permit Reform Act of 1981. If an application is incomplete the department will send the package back to the applicant. This information is contained on the Application for Employer Number, form DL 520 ETP. The department does not believe it is necessary for this information to be repeated in regulation.

Subsection (j) is amended due to section renumbering.

Subsection (k) is amended due to section renumbering and to update the revision date of the Application for Employer Number, form DL 520 ETP from 8/2002 to 9/2006. Details of the form revisions are located in Section 25.07(c)(1) of this Initial Statement of Reasons.

§25.09. Application Changes.

Subsections (a) and (b) are amended to update the revision date of the Application for Employer Number, form DL 520 ETP from 8/2002 to 9/2006. Details of the form revisions are located in Section 25.07(c)(1) of this Initial Statement of Reasons.

§25.10. Driving Test Routes.

Subsection (a) is amended to delete the phrase “upon adoption of these regulations.” Since this section has already been adopted, this phrase is not necessary.

This subsection is amended to update the revision dates of the Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP from 2/2005 to 2/2003 and the commercial DPE Maneuver Checklist, form DL 807 ETP from 7/2002 to 9/2006. Details of the form revisions are located in Section 25.08(a)(4) of this Initial Statement of Reasons.

Subsection (b) is amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP from 11/2002 to 9/2006 and the Firefighter’s Certificate of Driving Skill, form DL 170F ETP from 11/2005 to 9/2006. Details of the form revisions are located in Section 25.06(a) of this Initial Statement of Reasons.

Subsections (c) through (e) are amended to update the revision dates of the Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP from 2/2005 to 2/2003 and the commercial DPE Maneuver Checklist, form DL 807 ETP from 7/2002 to 9/2006. Details of the form revisions are located in Section 25.08(a)(4) of this Initial Statement of Reasons.

§25.14. Certificate of Driving Skill (DL170ETP and DL170FETP)

Subsections (a) through (d) are amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP from 11/2002 to 9/2006 and the Firefighter’s Certificate of Driving Skill, form DL 170F ETP from 11/2005 to 9/2006.

§25.15. Record-Keeping Program.

Subsections (a)(13) and (a)(14) are amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP from 11/2002 to 9/2006 and the Firefighter’s Certificate of Driving Skill, form DL 170F ETP from 11/2005 to 9/2006.

Subsection (a)(15) is amended to update the revision dates of the Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP from 2/2005 to 2/2003 and the Commercial DPE Maneuver Checklist, form DL 807 ETP from 7/2002 to 9/2006.

Subsection (c) is amended to update the revision date of the Application for Employer Number, form DL 520 ETP from 8/2002 to 9/2006.

Subsection (d)(2) is amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP from 11/2002 to 9/2006 and the Firefighter’s Certificate of Driving Skill, form DL 170F ETP from 11/2005 to 9/2006.

§25.16. Sample Testing of Certified Drivers.

Subsections (f) and (g) are amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP from 11/2002 to 9/2006 and the Firefighter’s Certificate of Driving Skill, form DL 170F ETP from 11/2005 to 9/2006.

§25.17. Cancellations/Reinstatements.

Subsection (a) is amended to update the revision date of the Employer Testing Program Voluntary Cancellation Request of Employee Number, form DL 520C ETP, from 8/2003 to 9/2006. This form was revised in September 2006 to update the Mail Station number of the Employer Testing Unit Program from H275 to L224. Also the word “Business” has been deleted from the applicant’s telephone number portion of the form.

Subsection (b) is amended to update the revision dates of the:

- Request for Reactivation Employer Number, form DL 817 ETP, from 7/2002 to 8/2003,
- Application for Employer Number, form DL 520 ETP, from 8/2002 to 9/2006,
- Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP, from 2/2005 to 2/2003, and
- Commercial DPE Maneuver Checklist, form DL 807 ETP, from 7/2002 to 9/2006.

The Request for Reactivation Employer Number, form DL 817 ETP has been updated from 7/2002 to 8/2003 to add a paragraph and perjury statement for the administrator to sign acknowledging that he or she is aware that the department will cancel, suspend or revoke the employer number if the company does not fulfill responsibilities under the Title 13 of the California Code of Regulations or Vehicle Code Section 15250. The administrator is also certifying that the employer will abide by all provisions listed in Title 13 of the California Code of Regulations and Vehicle Code Sections 12804.9(e) and 15250(c) and (d).

§25.18. Sanctions/Reinstatements.

Subsection (f) is amended to update the revision date of the Application for Employer Number, form DL 520 ETP, from 8/2002 to 9/2006.

§25.19. Employer Roles and Responsibilities.

Subsections (a), (c), (g) and (h) are amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP, from 11/2002 to 9/2006, and the Firefighter Certificate of Driving Skill, form DL 170F ETP, from 11/2005 to 9/2006.

§25.20. Administrator Roles and Responsibilities.

Subsection (b) is amended to update the revision dates of:

- the Application for Employer Number, form DL 520 ETP, from 8/2002 to 9/2006,
- the Commercial Driving Performance Evaluation Route and Directions, form DL 814 ETP, from 2/2005 to 2/2003, and
- the Commercial DPE Maneuver Checklist, form DL 807 ETP, from 7/2002 to 9/2006.

Subsection (i) is amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP, from 11/2002 to 9/2006, and the Firefighter Certificate of Driving Skill, form DL 170F ETP, from 11/2005 to 9/2006.

§25.21. Authorized Representative Roles and Responsibilities.

Subsection (b) and (h) are amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP, from 11/2002 to 9/2006, Firefighter Certificate of Driving Skill, form DL 170F ETP, from 11/2005 to 9/2006.

§25.22. Examiner Roles and Responsibilities.

Subsection (a)(1) is amended to update the form revision date of the Employer Testing Program Examiner Application, form DL 811 ETP, from 1/2005 to 9/2006. This form was amended in September 2006 to change the Employer Testing Program Unit's Mail Station from H275 to L224.

Subsection (f)(1)(A) and (B) are renumbered.

Subsection (f)(2) is added to allow Examiners to conduct a drive test with existing commercially licensed drivers employed by the company. This will allow the Examiner to meet the 90 day requirement as required by subsection (f) of this section. This will ensure the authorized representative maintains the skills necessary to conduct driving tests.

Subsection (f)(2)(A) is added to ensure that a drive test consists of a pre-trip inspection, skills test and road test as specified in Section 383.113 of Title 49 of the Code of Federal Regulations. This addition also requires the drive test to be on a department approved course and the driver's ability documented on a score sheet issued by the department (ETP CDL Pre-Trip Inspection Evaluation Score Sheet, DL 65 ETP Part 1 (Rev. 4/2003) and EPT CDL Driving Performance Evaluation Score Sheet, DL 65 ETP Part II (Rev. 4/2003)) to ensure the test taker is able to maneuver in all road conditions as required by Federal Regulations.

Subsection (f)(2)(B) is added to require the Examiner to log drive tests on the Employer Testing Program Driver Testing Log, form DL 819 ETP. This log sheet will indicate that the drive test was successfully completed and requires an authorized representative to sign and date the log sheet. This signature will certify the training drive test was conducted.

Subsection (f)(2)(C) is added to require the company to retrain the driver if he or she fails the training drive test. The company is required to retrain the driver in areas of deficient performance as noted on the drive test sheet. The Employer Testing Program Driver Testing Log, form DL 819 ETP will indicate the failed test.

Subsection (j) is amended to update the revision dates of the Certificate of Driving Skill, form DL 170 ETP, from 11/2002 to 9/2006, and the Firefighter Certificate of Driving Skill, form DL 170F ETP, from 11/2005 to 9/2006.

Subsection (m) is amended to update the revision date of the Medical Examination Report, form DL 51, from 2/2004 to 7/2006. The revisions bring this form into compliance with federal regulations relating to the blood pressure of commercially licensed drivers as specified in section 391.41(b), Title 49 of the Code of Federal

Regulations. The federal regulations require a driver whose blood pressure is usually 140/90 or higher as diagnosed by a physician, to be granted a one-time certificate for 3-month certification. Once the driver reduces his or her blood pressure to equal to or less than 140/90, he or she may be recertified annually thereafter.

This subsection is amended to update the revision date of the Health Questionnaire, form DL 546, from 4/2000 to 11/04. This form was updated in section 28.20, Title 13 of the California Code of Regulations, filed with the Office of Administrative Law on October 18, 2005. The form was updated according to the federal medical Advisory Criteria in section 391.41(b), Title 49 of the Code of Federal Regulations relating to blood pressure.